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Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Sweden to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the Union is governed by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[1] (the 'Energy Taxation Directive' or the 'Directive').

Pursuant to Article 19(1) of the Directive, in addition to the provisions laid down in particular in its Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in the level of taxation for specific policy considerations.

By virtue of Council Implementing Decision 2020/1674/EU of 29 October 2020[2] (preceded by Council Implementing Decision 2014/725/EU of 14 October 2014[3] and Council Implementing Decision 2011/384/EU of 20 June 2011[4]), Sweden has already been authorised to apply a reduced rate of taxation to electricity directly supplied to vessels, other than private pleasure craft[5], berthed in ports ('shore-side electricity').

The objective of this proposal is to extend that authorisation as requested by Sweden, given that the current derogation will expire on 31 December 2023.

By letter dated 5 April 2023, the Swedish authorities informed the Commission of their intention to prolong the current measure until 31 December 2027. The Swedish authorities provided additional information by letter dated 19 October 2023.

The intention of the Swedish authorities is to apply a reduced rate of SEK 6 (app. EUR 0.552) ([6]) per MWh of electricity tax to shore-side electricity. At the time of the submission of the request this tax rate was in accordance with the minimum rate of taxation for electricity for business use as laid down in Directive 2003/96/EC (i.e. EUR 0.5 per MWh).

Article 13 of the Directive lays down a tolerance limit for Member States that have not adopted the euro. These Member States are obliged to check once a year if the tax rates expressed in national currencies are in line with the minimum rates of the Directive. This exercise is done using the exchange rates published in the Official Journal of the European Union on the first working day of October. Member States may maintain the amounts of taxation in force at the time of the annual adjustment only if the conversion of the amounts of the level of taxation expressed in euro would result in an increase of less than 5% or EUR 5, whichever is the lower amount, in the level of taxation expressed in national currency.

The requested period of validity of the derogation is from 1 January 2024 until 31 December 2027, which is in continuity with the current derogation and within the maximum period allowed by Article 19 of the Energy Taxation Directive.

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1 OJ L 283, 31.10.2003, p. 51–70.
2 OJ L 378, 12.11.2020, p. 3–4.
3 OJ L 301, 21.10.2014, p. 27–28.
4 OJ L 170, 30.06.2011, pp. 36–37.
5 The term 'private pleasure craft' is defined in Article 14(1)(c), second subparagraph of Directive 2003/96/EC.
6 All calculations are based on the exchange rate on 3 October 2022, i.e. SEK 10,8743 for EUR 1. Cf. OJ C 381/4 of 4.10.2022

The aim of the tax measure is to encourage vessels, which usually use an oil-propelled auxiliary motor for their electricity supply, to use shore-side electricity instead. These provisions lead to fewer emissions from vessels lying at berth, thereby reducing the deposition of acidifying substances, which is a problem particularly in south-west Sweden. The provisions are also considered to lead to significant local environmental improvements, inter alia in the form of a reduction in noise levels.

The tax measure involves lowering the energy tax applicable to shore-side electricity from the otherwise applicable level of SEK 39.2 per MWh to SEK 6 per MWh.

According to Article 14(1)(c) of the Energy Taxation Directive Member States have to exempt energy products used to produce electricity –and electricity produced- on board ships at berth in ports. They may also do so in the case of electricity produced on board ships for navigation on inland waterways according to Article 15(1)(f) of the Directive. Sweden confirmed the transposition of this latter optional exemption.

Sweden will apply the reduced rate of electricity taxation to all supplies of shore-side electricity of at least 380 V to vessels used for commercial shipping of at least 400 gross tonnage. The limit is considered appropriate by the Swedish authorities so as to ensure that the absolute majority of vessels used in international traffic and larger vessels used in national traffic will be covered by the proposed reduction. These are the vessels considered to be responsible for the largest part of emissions caused by the running of auxiliary motors on board while berthed in ports. The reduction does not apply when the ship is used for private purposes or when it is laid up or has been taken out of service on a long-term basis.

There is however no obligation for vessels to use shore-side electricity.

The annual budgetary expenditure is estimated at SEK 12 million.

The measure is granted in the form of a repayment reducing the tax burden on the electricity concerned.

The Swedish authorities consider that the tax reduction applied to shore-side electricity does not create a significant competitive benefit for vessel operators using shore-side electricity as opposed to those using on board generation. If only the electricity cost itself and the tax is taken in account, then the cost for shore-side electricity with a lower tax rate is somewhat lower than the price for electricity produced on board. However, the total cost for the use of shore-side electricity is also affected by additional costs in the form of grid charges, investments in the on-board connection and directly or indirectly the costs for investments in the port supply facilities. However, as the investments in the supply facilities in the ports and on board are quite costly, the Swedish authorities consider that a lower tax rate is a prerequisite for ports and ship owners making these investments. According to the Swedish authorities the current and previous derogations have had a direct impact on both the number of ports and the number of facilities providing shore-side electricity by positively affecting the profitability of the transition from fossil fuels to electricity.

The aim of the measure is to reduce the environmental impact of maritime transport. The measure will reduce airborne emissions and noise from vessels lying at berth. The measure will go some way towards facilitating the achievement in the port cities of the limit values for nitrogen dioxide set out in the Air Quality Directive (2008/50/EC). This also has a positive impact on other air quality parameters around the ports.

Sweden requested the authorisation to be granted until 31 December 2027, starting from 1 January 2024, without interruption with the current derogation and within the maximum period indicated in Article 19(2) of the Directive.

- **Consistency with existing policy provisions in the policy area**

Taxation of electricity is governed by Directive 2003/96/EC, in particular Article 10. Article 14(1)(c) provides for an obligatory tax exemption for energy products for navigation as well as for electricity produced on board a craft. Articles 5, 15 and 17 provide for the possibility for Member States to apply tax differentiations, including exemptions and reductions, to certain uses of electricity. However, as such, these provisions do not provide for reduced taxation of shore-side electricity.

Provisions under the Energy Taxation Directive

Assessment of the measure under Article 19 of Directive 2003/96/EC

Article 19(1), first subparagraph, of the Directive reads as follows:

In addition to the provisions set out in the previous Articles, in particular in Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions for specific policy considerations.

The Commission has already recommended the use of shore-side electricity as an alternative to the generation of electricity on board the vessels at berth and thereby recognised its environmental advantages[7].

The possibility to introduce a favourable tax treatment to shore-side electricity can be envisaged under Article 19 of the Directive since its purpose is to allow Member States to introduce further exemption or reductions for specific policy considerations.

Sweden has requested that the measure should apply for 4 years, less than the maximum period allowed by Article 19(2), i.e. 6 years. In principle, the period of application of the derogation should be long enough in order not to discourage port operators and electricity suppliers from continuing or starting to make the necessary investments in shore-side electricity facilities. This period will provide the legal certainty also to ship operators, that have to plan their investments in on-board equipment.

However, the derogation should not undermine future developments of the existing legal framework and should take into account the ongoing revision of the Energy Taxation Directive and a possible adoption by the Council of a legal act based on the Commission proposal to recast the Energy Taxation Directive[8].

Under these circumstances, while it appears appropriate to grant the authorisation for the requested period, the validity of the derogation should be made subject to the entry into application of general provisions on the matter at a point in time earlier than the end of 2027.

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7 Commission Recommendation 2006/339/EC of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports (OJ L 125, 12.5.2006).

8 COM/2021/563 final: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast)

State aid rules

The reduced tax rate of SEK 6 (app. EUR 0.552) ([9]) per MWh envisaged by the Swedish authorities was at the time of the submission of the request in accordance with the minimum rate of taxation for electricity for business use as laid down in Directive 2003/96/EC.

The Swedish authorities acknowledge that the measure constitutes state aid and argue that the measure meets the material conditions in Commission Regulation (EU) No 651/2014 of 17 June 2014, as last amended by Commission Regulation (EU) 2023/1315 of 23 June 2023, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (the 'General Block Exemption Regulation', 'GBER').

The proposal for a Council implementing decision does not prejudge the Member State's obligation to ensure compliance with State aid rules.

- **Consistency with other Union policies**

Environment and climate change policy

The requested measure concerns mainly the EU's environment policy. To the extent that it will help to reduce the burning of bunker fuels on board the vessels in ports, the measure will in fact contribute to the objective of improving local air quality, reducing noise and fighting climate change. Directive 2008/50/EC on Ambient Air Quality[10] requires Member States to ensure that the levels of several air pollutants are kept below the limit values, target values and other air quality standards, established in the Directive. This obligation requires Member States to find solutions to problems such as ship emissions at berth in ports where this is relevant and it is conceivable that in ports where these problems exist the use of shore-side electricity will be encouraged as one element of the overall air quality strategy. The use of shore-side electricity is also encouraged under Directive (EU) 2016/802[11] regulating the sulphur content in marine fuels.

According to the Swedish authorities, the use of shore-side electricity has led to emission reductions of sulphur dioxide, nitric oxides, particulate matters and carbon oxides. The Swedish Authorities do not presently have any more recent estimates of the emission reductions attributed to the measure. The full potential of the measure has not been reached since costly equipment is needed both on quays and on the ships. The use of shore-side electricity is of importance in the Swedish strive to meet the air quality standards in accordance with the directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe.

Energy policy

The measure is in line with Directive 2014/94/EU on the deployment of alternative fuels infrastructure[12], which addresses the issue of installing shore-side electricity supply facilities

9 All calculations are based on the exchange rate on 3 October 2022, i.e. SEK 10,8743 for EUR 1. Cf. OJ C 381/4 of 4.10.2022

10 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p 1).

11 Directive (EU) 2016/802 of the European Parliament and of the Council of 11 May 2016 relating to a reduction in the sulphur content of certain liquid fuels (OJ L 132, 21.5.2016, p. 58–78).

12 Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, pp. 1–20)

in ports where there is demand for such facilities and the costs are not disproportionate to the benefits, including environmental benefits.

It has to be recalled at this point that one important reason for the unfavourable competitive position of shore-side electricity lies in the fact that the alternative, i.e. electricity produced on board the vessels while in maritime ports, currently enjoys a full net tax exemption: not only is the bunker fuel burnt for generating the electricity exempt from taxation, which corresponds to the normal situation under Article 14(1)(a) of Directive 2003/96/EC, but also the electricity produced on board the vessels is itself exempt (cf. Article 14(1)(c) of Directive 2003/96/EC). Although the latter exemption could as such be considered difficult to reconcile with the environmental objectives of the Union, it mirrors considerations of practicability. In fact, taxation of the electricity produced on board would require a declaration by the ship owner – often established in a third country – or operator of the amount of electricity consumed. The declaration would furthermore have to determine the share of the electricity consumed in the territorial waters of the Member State where the tax is due. It would create a huge administrative burden for ship-owners to have to make such declarations for every Member State whose territorial waters are concerned.

Transport policy

The measure is in line with Commission recommendation 2006/339/EC on the promotion of shore-side electricity for use by ships at berth in Union ports[13] and with the Commission Communication Strategic goals and recommendations for the EU's maritime transport policy[14].

Internal market and fair competition

From the point of view of the internal market and fair competition the measure only reduces the existing tax distortion between two competing sources of electricity for boats at berth, i.e. on board generation and shore-side electricity, caused by the tax exemption for bunker fuels.

The Swedish authorities have not observed considerable changes in the ship owners' choice of ports linked to the availability of shore-side electricity facilities. Presently mainly ferries and route bound traffic make use of the shore-side electricity. The ship owners' choice of port is not based on whether shore side electricity is supplied or not. According to stakeholders, cruise liners often chose berths where shore-side electricity is available.

Furthermore, access to shore-side electricity will be available for the ships concerned regardless of their flag without leading to a more advantageous tax treatment of national economic operators over their competitors from other EU Member States.

Concerning competition between ports, it can be expected that any potential impact on trade between Member States, which could result if vessels alter their routes because of the possibility to consume shore-side electricity at a reduced tax rate, will be negligible. In a situation where, as stated above, the use of shore-side electricity is, at least in the short term, unlikely to become more economic than on-board generation in spite of the tax reduction, this

[13] Commission Recommendation 2006/339/EC of 8 May 2006 on the promotion of shore-side electricity for use by ships at berth in Community ports (OJ L 125, 12.5.2006)

[14] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Strategic goals and recommendations for the EU's maritime transport policy until 2018, COM(2009) 8 final of 21 January 2009.

tax reduction for shore-side electricity is also unlikely to significantly distort competition between ports by inducing vessels to change their itinerary according to the availability of this option.

The timeframe for which it is proposed to prolong the authorisation to apply a reduced tax rate, unless there will be significant changes in the current framework and situation, makes it unlikely that the analysis conducted in the preceding paragraphs will change before the date of expiry of the measure.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 19 of Council Directive 2003/96/EC.

• Subsidiarity (for non-exclusive competence)

The field of indirect taxation covered by Article 113 of TFEU is not in itself within the exclusive competence of the European Union within the meaning of Article 3 of TFEU.

However, pursuant to Article 19 of Directive 2003/96/EC, the Council has been granted an exclusive competence, as a matter of secondary law, to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot therefore substitute themselves for the Council. As a result, the principle of subsidiarity is not applicable to the present implementing decision. In any event, since this act is not a draft legislative act, it should not be transmitted to national Parliaments pursuant to Protocol No 2 to the Treaties for review of compliance with the subsidiarity principle.

• Proportionality

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question.

• Choice of the instrument

The instrument proposed is a Council implementing decision. Article 19 of Directive 2003/96/EC makes provision for this type of measure only.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The measure does not require the evaluation of existing legislation.

• Stakeholder consultations

This proposal is based on a request made by Sweden and concerns only this Member State. Therefore, no stakeholder consultation has been conducted.

• Collection and use of expertise

There was no need for external expertise.

- **Impact assessment**

This proposal concerns an authorisation for an individual Member State upon its own request and does not require an impact assessment.

The information provided by Sweden suggests that the measure will have a limited impact on tax revenues. In more detail, an estimation of the tax expenditures from the measure, according to the Swedish authorities, a loss of SEK 12 million per year is expected for the coming years.

Sweden expects the measure to have a positive impact on the achievement of its environmental goals and in particular the improvement of air quality in accordance with Directive 2008/50/EC on ambient air quality and cleaner air for Europe. The use of shore-side electricity has led to emission reductions of sulphur dioxide, nitric oxides, particulate matter and carbon oxides. The full potential of the measure has not been reached since costly equipment is needed both on quays and on the ships.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by Sweden and concerns only this Member State.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

The measure does not impose any financial or administrative burden on the Union. The proposal therefore has no impact on the budget of the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

An implementation plan is not necessary. This proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period until 31 December 2027. The tax rate that will apply will have to be in accordance with the minimum level of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 stipulates that Sweden will be allowed to apply a reduced rate of electricity taxation to electricity directly supplied to vessels, other than private pleasure craft, berthed in Swedish ports (‘shore-side electricity’). The tax rate must be in line with the minimum level of taxation for electricity for business use set by the Directive. It will not be possible to supply electricity at a reduced rate to private pleasure craft as defined in Article 14(1)(c), second subparagraph of Directive 2003/96/EC.

Article 2 stipulates that the authorisation requested is granted with effect from 1 January 2024, in continuity with the current Council Implementing Decision 2014/725/EU, until 31 December 2027, within the maximum period of 6 years allowed by the Directive, as requested by Sweden.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[1], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Implementing Decision 2020/1674/EU[2], Sweden was authorised to apply a reduced rate of taxation to electricity directly provided to vessels, other than private pleasure craft, at berth in a port ('shore-side electricity') in accordance with Article 19 of Directive 2003/96/EC until 31 December 2023.

(2) By letter of 5 April 2023, Sweden sought authorisation to continue to apply a reduced rate of taxation to shore-side electricity pursuant to Article 19 of Directive 2003/96/EC until 31 December 2027. The Swedish authorities provided additional information by letter dated 19 October 2023.

(3) By applying a reduced rate of taxation to shore-side electricity, Sweden aims to continue the promotion of the use of shore-side electricity. The use of such electricity is considered to be an environmentally less harmful way to satisfy the electricity needs of vessels lying at berth in ports than the burning of bunker fuels.

(4) Insofar as the use of shore-side electricity helps to avoid emissions of air pollutants originating from the burning of bunker fuels, it contributes to an improvement to the local air quality in port cities and to noise reduction. The measure is therefore expected to contribute to the environmental, health and climate policy objectives of the Union.

(5) Allowing Sweden to apply a reduced rate of taxation to shore-side electricity does not go beyond what is necessary to increase the use of such electricity, since on-board generation of electricity will remain the more competitive alternative in most cases. For the same reason, and because of the current relatively low degree of market penetration of the technology, the measure is unlikely to lead to significant distortions in competition during its lifetime and would thus not negatively affect the proper functioning of the internal market.

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1 OJ L 283, 31.10.2003, p. 51.

2 Council Implementing Decision (EU) 2020/1674 of 29 October 2020 authorising Sweden to apply a reduced rate of taxation to electricity directly provided to vessels at berth in a port, in accordance with Article 19 of Directive 2003/96/EC (OJ L 378, 12.11.2020, p. 3, ELI: http://data.europa.eu/eli/dec_impl/2020/1674/oj).

(6) In accordance with Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be limited in time. In order to ensure that the authorisation period is sufficiently long so as not to discourage relevant economic operators from making the necessary investments, it is appropriate to grant the authorisation until 31 December 2027. However, the authorisation should cease to apply from the date of application of any general provisions on tax advantages for shore-side electricity adopted by the Council under Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, should such provisions become applicable during the period of the authorisation.

(7) In order to provide legal certainty to port and ship operators and to avoid a potential increase in the administrative burden for the distributors and redistributors of electricity, it should be ensured that Sweden may continue to apply a reduced rate of taxation to shore-side electricity. The authorisation requested should therefore be granted with effect from 1 January 2024, in order to follow seamlessly on from the prior arrangements under Implementing Decision (EU) 2020/1674.

(8) This Decision is without prejudice to the application of Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

Sweden is authorised to apply a reduced taxation rate to electricity directly supplied to vessels, other than private pleasure craft, berthed in ports (‘shore-side electricity’), provided that the minimum levels of taxation referred to in Article 10 of Directive 2003/96/EC are respected.

Article 2

This Decision shall apply from 1 January 2024 until 31 December 2027.

However, should the Council, acting on the basis of Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, provide for general rules on tax advantages for shore-side electricity that become applicable during the period of authorisation set out in the first paragraph of this Article, this Decision shall cease to apply on the day on which those general rules become applicable.

Article 3

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels,

For the Council
The President